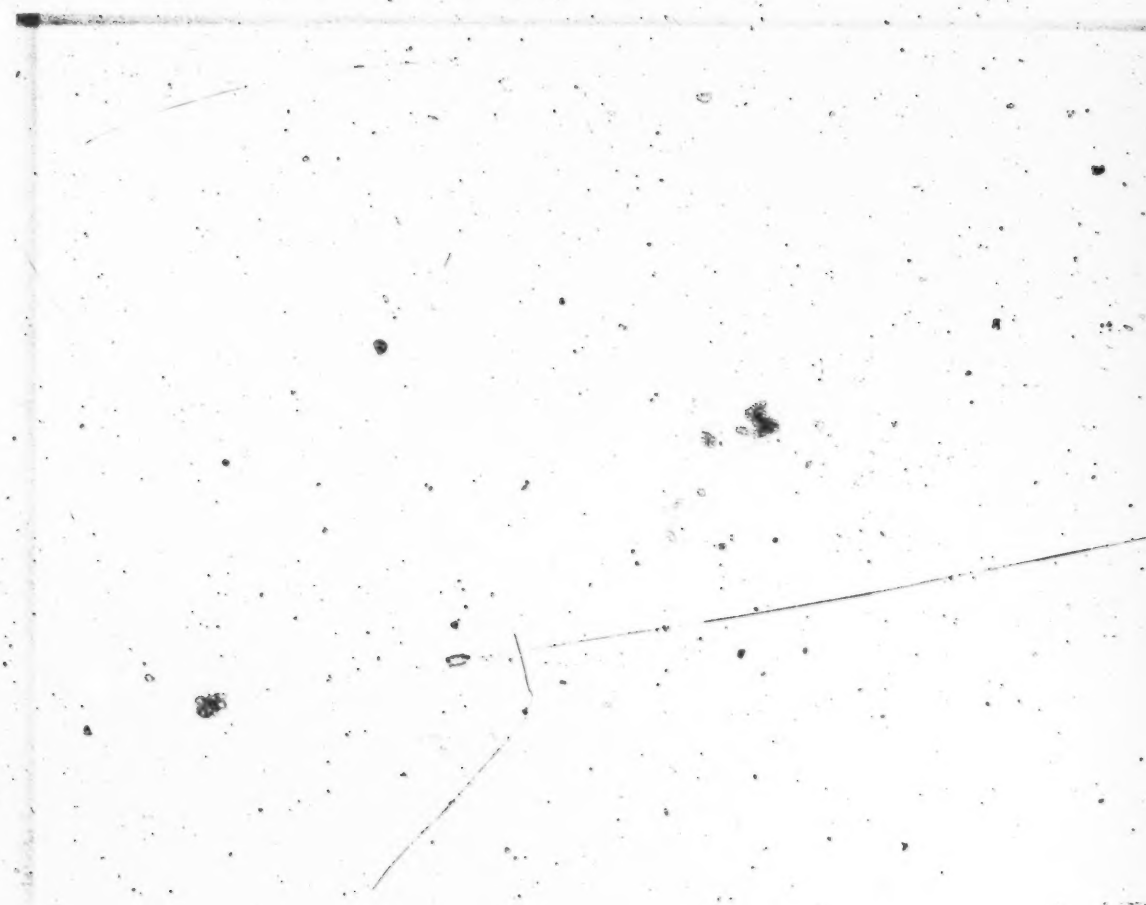

SUPREME COURT OF THE UNITED STATES

No. 754

SEASIDE [illegible]
[illegible]

v.

STATE ROAD DEPARTMENT OF FLORIDA

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

INDEX

	Page
Introductory Statement	1
Jurisdiction	2
Conclusion	5
Appendix	App. 1

IN THE

SUPREME COURT OF THE UNITED STATES

No. 754

SEASIDE PROPERTIES, INC.,
a Florida corporation,

Appellant,

vs.

STATE ROAD DEPARTMENT OF FLORIDA,

Appellee.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

INTRODUCTORY STATEMENT

The Appellee's Introductory Statement contained several paragraphs, but, in particular, Paragraph No. 4, on page 2 of the Motion in which the Appellee has incorrectly stated the Appellant's position and the legal import of the pleadings in reference to Appendix 12 of the Appellant's Jurisdictional Statement.

The section to which the Appellee refers in Appendix 12, was Paragraph "h." of the Appellant's Petition for Writ of Certiorari to the District Court of Appeal which was filed with the Supreme Court of the State of Florida

on December 19, 1966. The reference to the Appellant's Appeal to the District Court of Appeal, Third District of Florida in 1960 which is reported at 121, So. 2d., page 204, is not a case in issue before this Court, although it is apparent that the Appellee has mistakenly seized on the first appeal between these present parties in a desperate attempt to bolster its Motion to Dismiss.

Inclusion of the appeal of 1960 between these parties and reported at 121, So. 2d., page 204 is immaterial, and even if considered by this Court, is of no help to the Appellee, but, to the contrary, materially supports the Appellant's position since the Constitutional issues were raised in the initial Bill of Complaint, filed March 11, 1957. This is also true of the Amended Bill of Complaint filed by the Appellant on December 10, 1957, in the Trial Court. Portions of these two (2) Complaints form a part of the Appendix herein.

JURISDICTION

In the Appellee's Motion to Dismiss under the jurisdictional section pages 2 and 3, contain the argument that a Federal issue was not raised or decided in the 1959-1960 appeal involving these parties (cited as 121, So. 2d., 204). This statement by the Appellee is a half truth, since the Trial Court and the District Court of Appeal chose to ignore the constitutional questions involved, as these courts did again in the latest appeal between these parties (190, So. 2d., 391, 1966 D.C.A. 3 and 201 So. 2d.). Simply because these Appellant Courts chose to duck the Constitutional issue which was presented, does not erase the fact that the Federal questions were duly and timely raised.

Nor does the rulings of the District Court and the actions of the Supreme Court of Florida support the position of the Appellees that non-Federal grounds were used to decide the case since an examination of the pleadings, as heretofore presented with the Jurisdictional Statement and the Record on Appeal, clearly reflect that the two (2) latter Appeals were predicated upon the unconstitutional Statute of the State of Florida 373.31 (1).

Clearly, this is unconstitutional and a violation of the rights of the Plaintiff and the citizens of the State of Florida and the ignoring of the constitutional questions by the state courts does not deprive the Appellant of the right to have this issue decided by this Honorable Court.

The Appellee, on page 4 of its Motion, further attempts to mislead this Court under the false premise that the Appellants did not own the property taken by the Appellee, however, it is clear from all of the pleadings filed in the Trial Court in District Court of Appeal, Third District and in the Supreme Court, that the Appellee never had a legal title to this property except through the operation of the statute 337.31 (1), which is now under attack and has been under attack by the Appellant in all stages of these proceedings from March 11, 1957, to the filing of this Jurisdictional Statement in the Supreme Court of the United States. The Appellant respectfully points out to this Court that, under Appendix 2, the Final Decree of the Trial Court of October 28, 1964, in Paragraph 2, the Court said, in part: - - -

> "Plaintiff is not entitled to any compensation for same as long as the defendant needs, main-

tains and controls the same according to the Florida Statutes."

There is nothing in the Trial Court's position that dignifies the Appellee's argument that the Appellants were merely occupants of the property without color of title or legal claim.

The District Court of Appeal, in its Opinion of September 27, 1966, and set forth in the Jurisdictional Appendix 5, said:

> "The Road Department contends that it was the owner of the land in question under the Provisions of Section 337.31, Florida Statutes in as much as it had maintained the same for more than four (4) years.
>
> - - - It is clear therefore, that even if there were no original deed of the land in question to the Road Department as claimed by Seaside, the title to the aforesaid land has vested in the Road Department under the Statute."

A reading of the pleadings and the opinions cogently supports the Appellant's contentions and brightly illuminates the falsity of the Appellee's contentions.

CONCLUSION

The Appellant respectfully submits that this case properly belongs in the Supreme Court of the United States because a substantial Federal question was properly raised and requires an answer and direction to the state courts of the State of Florida for the protection of its citizens.

Respectfully submitted,

GUION T. DE LOACH
Attorney for Petitioner
311 S. W. 27th Avenue
Miami, Florida 33135

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief in Opposition to Appellee's Motion to Dismiss was mailed to P. A. PACYNA, Attorney for Respondent, State Road Department of Florida, Haydon Burns Building, Tallahassee, Florida, 32304, on the _____ day of November, 1967.

GUION T. DE LOACH